CANCELLED

(3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (CG)

W.P. No. 242/2002

Petitioner : Dinesh Kumar Agrawal,

aged 38 years, s/o late Shri Batuk Krishna Agrawal, Upper Division Teacher, Mahatma Gandhi H.S. SCHOOL, DURG (C.G.).

P. R. No. 2411/02
Presented by Shri R S Shrivastava
dated 26.11.02

Vs.

Respondents 1. NMunicipal Corporation, Durg.

Through : Commissioner, Municipal Corporation, Durg.

2. Principal,

Mahatma Gandhi H.S. School,

DURG.

3. Deputy Director of Education,

DURG.

4) State of Chhatisgarh
Through The Secretary, Local Self Govt.
DKS BHAWAN, RAIPUR (CG)
(Amended as per Hon'ble Court order dt 20-02-02)

Attested

Writ petition Under Article 226/227 OF the Constitution of India.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 242 of 2002

Petitioner : Dinesh Kumar Agrawal

Versus

Respondents : Municipal Corporation, Durg & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Ajay Shrivastava, Advocate for the petitioner.

Miss Sharmila Singhai, Advocate for the respondent No.1.

Shri V. V. S. Murthy, Deputy Advocate General with Smt. Anju Ahuja, Deputy Govt. Advocate for the respondent No.3.

ORDER

(Passed on this 28th day of February, 2007)

1. The petitioner was appointed on the post of Upper Division Teacher in the respondent No.2 School on 9.9.1987. The petitioner obtained B. Ed. Examination certificate in the year 1986, on his own expenses.

2. Learned counsel for the petitioner submits that the petitioner, being a teacher is entitled to two advance increments in accordance with the decision of this Court in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** {2006 (II) MPJR-CG 96}. This Court in the case of Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another (Supra), came to the conclusion that the teachers, who had obtained B. Ed. /B.T.I. Examination Certificate on their own expenses, are covered by the circular dated 24.12.98 (Annexure P/7) issued by the State Government of Madhya Pradesh.

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3. Further in the matter of **Smt. Manorama Shrivastava Vs. State of M.P. and others** { 2000 (1) M.P.L.S.R. 136 } the Madhya Pradesh State Administrative Tribunal, Gwalior Bench, while considering the circular dated 1.3.1999 wherein, it is provided that the Assistant Teachers, who have acquired B.Ed. degree at their own cost between 23.10.1964 and 7.5.1973 shall be entitled to two advance increments, relied on decision in the case of **Rakesh Kumar Shrivastava Vs. State of M.P. & others** passed in O.A.No. 1632/99, decided on 12.10.1999 wherein it is observed that the circular dated 1.3.1999 cannot be made applicable retrospectively. Thus, a teacher, may be Assistant Teacher, who has obtained B.Ed. degree before 1.3.1999 is entitled to two advance increments.

4. It is pointed out by learned counsel appearing for the petitioner that the then State of Madhya Pradesh had filed a Special Leave Petition against the orders passed by the Tribunal and the Hon'ble Supreme Court dismissed Special Leave Petition No. 1999/2000 filed against the order of the Tribunal. Therefore, the direction to the effect that the circular dated 1.3.1999 cannot be made applicable retrospectively, passed by the Tribunal, becomes final and the same shall be applicable to all the Assistant Teachers who have obtained B.Ed./B.T.I. examination certificate before 1.3.1999. It is further substantiated by a circular dated 17.10.2003 issued by the present State of Madhya Pradesh wherein the circular clearly states about the decision of the Supreme Court.

5. Learned counsel for the petitioner further submits that the facts and question of law involved in the present case are squarely

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covered by decision of this Court in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** (Supra), to which learned counsel appearing for the respondents fairly concedes and agrees with the averment made by learned counsel appearing for the petitioner.

6. In regard to the second prayer of the petitioner that the petitioner be considered for promotion to the post of Lecturer, learned counsel for the petitioner submits that the petitioner does not want to press this prayer for the time being. However, the petitioner be granted liberty to make a representation before the concerned authority. He further submits that in case the petitioner is not satisfied with the order passed on the representation, the petitioner be granted liberty to take recourse to the legal remedy, as available under the law.

7. Accordingly, the writ petition is allowed in terms of the order passed in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** (Supra), subject to verification of the fact as to whether the petitioner has acquired B. Ed. Examination Certificate on his own expenses as per the circulars dated 24.12.1998 & 1.3.1999 and further whether he has been paid two advance increments or not. With regard to the second prayer for promotion, the petitioner is granted aforestated liberty. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur